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ABSTRACT

In "United States v. State of Texas," a federal judge in 1971 handed down a statewide desegregation order affecting over 1,000 Texas school districts, to be enforced by the Texas Education Agency (TEA). Chapter 1 of this evaluation of the order's implementation begins with the national background and local history of the case and then outlines the court order's directives on district boundary changes, extracurricular activities, faculty and staff, curriculum and compensatory education, complaints and grievances, notification, jurisdiction, and student transfers, transportation, and assignment. Chapter 2 discusses TEA's role in the implementation of the order, including enforcement of the order through TEA's Technical Assistance Division, enforcement procedures used, and implementation problems encountered. In chapter 3 the author uses statistical data, interviews, and site visits to 19 districts to assess the order's impact and effectiveness. He examines Texas school desegregation in the 1970s, districts with 66-percent-minority schools, administration of the order in the 19 districts, and district officials' attitudes toward TEA enforcement. Chapter 4 analyzes the order's effects and recommends improvements concerning implementation procedures, sanctions, and organizational structure. (RW)

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Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin
Policy Research Project Report

51

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The Implementation of *United States* v. *State of Texas*

A Report by
The School Desegregation in Texas Policy Research Project
Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin
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FOREWORD

The Lyndon B. Johnson School of Public Affairs has established interdisciplinary research on policy problems as the core of its educational program. A major part of this program is the nine-month policy research project, in the course of which one or more faculty members direct the research of ten to twenty graduate students of diverse backgrounds on a policy issue of concern to an agency of government. This "client orientation" brings the students face to face with administrators, legislators, and other officials active in the policy process, and demonstrates that research in a policy environment demands special talents. It also illuminates the occasional difficulties of relating research findings to the world of political realities.

This report on desegregation in Texas is the product of a policy research project conducted at the LBJ School in 1979-80 under a grant from Title IX of the Higher Education Act of 1965. The study examines the background, implementation, and impacts of the statewide desegregation order issued in 1971 as a result of a suit brought against the State of Texas by the federal government. It then makes recommendations to the Texas Education Agency for improving the organizational locus for the order's enforcement, the procedures surrounding its implementation, and the prescribed sanctions.

It is the intention of the LBJ School both to develop men and women who have the capacity to perform effectively in public service and to produce research that will enlighten and inform those already engaged in the policy process. The project that resulted in this report has helped to accomplish the former; it is our hope and expectation that the report itself will contribute to the latter.

Elspeth Rostow
Dean

PREFACE

The following report is a study of the implementation of a broad, statewide desegregation order, affecting over one thousand school districts, issued by Judge William Wayne Justice of the Eastern District of Texas in 1971. As with many remedial orders in the arena of public law litigation, its enforcement was assigned to an agency of the executive branch--in this case, the Texas Education Agency. Our task has been to evaluate the implementation of the order and to review the order itself in the light of developments in the intervening decade.

This report, authored by the project director, combines the research findings of a year-long policy research project with my subsequent investigation and analysis. Funds for the effort came from a grant to the LBJ School of Public Affairs by the (then) U.S. Office of Education under Title IX of the Higher Education Act of 1965.

Special thanks are due to Gilbert Conoley, former Director of the Technical Assistance Division of the Texas Education Agency, and to project participants Kim Brown, Martha Dickie, and Deborah Dobray for their constructive criticism and advice in the preparation of this report and its recommendations.

Richard L. Schott
Project Director

CHAPTER 1

THE EVOLUTION OF UNITED STATES v. STATE OF TEXAS

INTRODUCTION

On April 20, 1971, federal Judge William Wayne Justice of the Eastern District of Texas, ruling in a suit brought against the State of Texas by the federal government, handed down a school desegregation order of unprecedented scope and magnitude. Finding that substantial elements of a dual school system still remained, Judge Justice placed virtually the entire state under court order, threatened severe sanctions against recalcitrant school districts, and assigned the implementation of the remedial order to the state's department of education, the Texas Education Agency.[1]

Such judicial activism was then and remains today characteristic of much of national policymaking in the controversial arena of school desegregation--an arena typified by relative quiescence on the part of the legislative and executive branches and by a growing activism on the part of the courts. The landmark Supreme Court ruling in Brown v. Board of Education (1954) reversed the long-standing "separate but equal" doctrine and found that state-mandated racial segregation in the public schools was inherently unequal and thus unconstitutional. In a subsequent opinion known as "Brown II," issued the following year, the high court urged implementation of desegregation with "all deliberate speed" and a "good faith" effort toward compliance.[2]

During the decade after the Brown decisions, the pace of desegregation in the southern states was extremely slow. Federal district judges--offered little firm guidance by either the Brown decisions or other Supreme Court decisions on desegregation during this period--varied greatly in their imterpretation of the Brown requirements.[3] Attempts to implement desegregation were met first by massive resistance in several southern states, then by token placement of selected Black pupils in predominantly Anglo schools. These responses were followed by the adoption of "freedom-of-choice" plans and the concept of neighborhood schools. By 1964, however, fewer than 3 percent of southern Black children attended desegregated schools.[4]

Several developments in the mid-1960s again brought desegregation to the forefront of national attention and greatly increased pressure on local districts in the South to dismantle their dual school systems. One of these was the passage of the Civil Rights Act of 1964, which, in addition to banning discrimination in public accommodations, provided for the termination of federal funding to segregated school systems and allowed the Department of Justice to bring suit in the federal courts against offending districts. The Act also drew into the desegregation arena the Department of Health, Education, and Welfare (HEW), whose Office of Education was charged with developing and enforcing desegregation guidelines. Before the Civil Rights Act, implementation of desegregation had been approached piecemeal through the courts; now the influence of the executive bureaucracy would also be brought to bear.

The elaboration of case law in this period gave further impetus to desegregation. One finds the beginnings of a more activist approach in decisions rendered by the Fifth Circuit Court of Appeals in 1965 and 1966. In United States v. Jefferson County Board of Education,[5] Judge John Minor Wisdom held that the criterion of "deliberate speed" had been abused as an excuse for delay and tokenism. School boards must not only stop segregating, they must take steps to integrate their facilities. "The only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity," Wisdom wrote, "is a system-wide policy of integration."[6] The remedial order entered by the court covered not only minority student distribution, but also transportation, curricular matters, and faculty assignments. The Jefferson decisions, which relied heavily on desegregation guidelines developed by the Department of Health, Education, and Welfare, placed southern federal district judges in a position to fashion broader remedies for past segregation.

Two years later, in Green v. County School Board,[7] the Supreme Court itself moved beyond the original parameters of the Brown decisions. Local school boards, the Court ruled, had an affirmative duty to take necessary steps to eliminate racial discrimination "root and branch." This ruling effectively ended freedom-of-choice plans and injected a sense of urgency into developing desegregation remedies which would work and work quickly. Green was

> a watershed case not because of what was said but because the Supreme Court said it. In its skepticism toward freedom-of-choice, its reliance on statistical evidence,

its insistence on results, and its imposition on school boards of an affirmative duty, Green mirrored to a great extent Judge Wisdom's landmark rulings for the Fifth Circuit and the approach of the 1966 HEW guidelines.8

THE BACKGROUND OF UNITED STATES v. STATE OF TEXAS (U.S. v. Texas)

U. S. v. Texas mirrored this more activist policy toward desegregation. The case itself evolved from an HEW investigation into discriminatory practices by the Daingerfield Independent School District (ISD) in East Texas. The district had for many years accepted transfers of Anglo students from adjacent, predominantly Black, and unaccredited Cason ISD. In February of 1968 the Office of Civil Rights of the Department of HEW advised the Daingerfield ISD that they must take steps to eliminate their dual school system in 1968-69, including the halting of transfers of Anglo students from Cason ISD. In April, the Daingerfield school superintendent announced that the district would no longer accept transfers from Cason.[9] Faced with the prospect of being forced to send their children to an unaccredited and predominantly Black school in Cason, a number of Anglo citizens, under the authority of Texas law,[10] petitioned to detach roughly a square mile of land (whose residents were predominantly Anglo) from the heart of Cason and annex it to the Daingerfield ISD. The School Boards of Morris County, where Cason ISD was located, and of Titus County, where Daingerfield ISD lay, approved the annexation petition; and the gerrymandered portion of Cason was added to the Daingerfield Independent School District. A subsequent investigation by the Dallas regional office of HEW determined that the Daingerfield ISD was out of compliance with the Civil Rights Act of 1964 and so notified the district in March of 1969. Later in that month, the regional office of HEW referred the matter to its Washington office for further action and possible litigation.

In Washington, the matter was assigned to Alexandra Polyzoides, an attorney in the Office of the General Counsel of HEW, and David Vanderhoof, an attorney with the Civil Rights Division of the Justice Department. Though they considered the case as routine and localized, the further the two attorneys examined the situation, the more its implications broadened. In Daingerfield and elsewhere, the state's department of education, the Texas Education Agency (TEA), had approved actions taken by local school districts which, though in compliance with Texas law, were possibly unconstitutional. The State, in their judgment, was ignoring the

affirmative duty to implement the Fourteenth Amendment placed upon it by the Green decision. The attorneys discovered some 14 school districts with enrollments of fewer than 250 pupils that were both entirely Black and contiguous with one or more largely Anglo districts. Through their on-site investigations in school districts in eastern Texas, and aided by investigators from the FBI, they documented numerous examples of unequal educational facilities for Blacks and Anglos and further evidence of the continued existence of dual school systems. Further, there was strong evidence of state action in permitting segregatory boundary changes and continued state financial aid to discriminating districts in apparent violation of the Civil Rights Act.

As the scope of their investigation increased, their remedial strategy shifted. They became convinced that to correct the numerous violations of federal and constitutional law occurring in the state on a case-by-case basis would take years and interminable litigation. To remedy these violations, it would be necessary to attempt to place the entire state under court order.[11]

U.S. v. TEXAS AND ITS REMEDIAL ORDER

On March 6, 1970, the action was commenced under U.S. v. Texas in the Marshall division of the eastern federal court district of Texas to enforce both Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment of the United States Constitution. The suit was based on findings in nine of the all-Black school districts. It alleged that the State of Texas, the Texas Education Agency, and its officials had failed to provide all children equal educational opportunities without regard to race. Further, the complaint alleged that the State, through TEA as the chief supervisory body of public education, had failed adequately to oversee and supervise local school districts so that no child was denied the benefits of federally funded programs on the basis of race, color, or national origin.

After pretrial hearings in which virtually all the material gathered by the federal attorneys and the FBI had been accepted into evidence, the suit came to trial in Marshall, Texas, on September 14, 1970. The district court, William Wayne Justice presiding, issued its finding of facts, conclusions of law, and order on November 24, 1970, followed on December 4 by a memorandum opinion.[12] The court found that the defendants had

> arranged for, approved or acquiesced in an assortment of detachments and annexations of territory and student transfers and transportation arrangements which have had the effect of transferring students between administrative units so as to create and perpetuate all Black districts. . . . Each district, when measured against its contiguous districts, displays inferior educational facilities and personnel.[13]

The court further found that the State had continued to support "administrative units which were created under color of State law requiring separate educational facilities, or at the least, were formed without regard to constitutional standards of equality."[14] The record in the case, the court concluded, "demonstrates that the policies and practices of TEA in administering the public school system in Texas have frequently--whether inadvertently or by design--encouraged or resulted in the continuation of racially segregated public education within the state."[15]

The order itself was divided into two parts, the first dealing with the all-Black school districts and the second with the role of TEA as the supervisory body for public education in the state. Part one of the order required the defendant school districts, their superintendents, and the county boards of education to work with TEA and with the U.S. Office of Education to prepare desegregation plans which would result in their consolidation with or annexation to adjacent Anglo districts.

Part two of the order, broad and comprehensive, was based on the court's conclusion that it could "conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform statewide plan for school desegregation, made applicable to each local county and city system not already under court order to desegregate and to require these defendants to implement it."[16] The order enjoined the State of Texas from permitting or approving any policy or practice which would contribute to the maintenance of a dual school system within Texas. The court listed several specific activities to be enjoined, among them interdistrict transfers of students and consolidation of school districts that would have the effect of impeding desegregation. TEA was ordered to reevaluate its activities and practices affecting desegregation within the state, including, but not limited to, assignment of students and faculty, school transportation, curriculum, and extracurricular activities. TEA was ordered to submit a plan outlining specific actions

in support of desegregation it would take under its affirmative obligation under the Civil Rights Act and the Fourteenth Amendment. The plan was to include recommendations regarding present administrative practices, the employment of sanctions, the identification of practices of school districts and county boards of education that did not meet federal standards, and the creation of a uniform procedure within TEA to process grievances. In addition, the court ordered a comprehensive reporting system under which TEA was required to make an annual review of school systems throughout the state and report its findings.[17]

In March of 1971, the case, CA 5281, was transferred to the Tyler division. On April 9, 1971, the court, after reviewing the plans required by the first order, issued a second order dealing with desegregation of the remaining all-Black school districts named as defendants in the suit.[18]

On the following day, the court, having studied the required plans submitted by the State, issued a broad and sweeping order defining the role of the Texas Education Agency in desegregation efforts and specifying procedures for monitoring school districts throughout the state.[19] A summary of the order is provided below.[20]

Student Transfers. The court forbade transfers of students between school districts which would perpetuate segregation. TEA was required to review all requests for transfers and to disapprove those which were segregatory. If such transfers took place in spite of TEA disapproval, the Agency was required to terminate the state funds based on average daily attendance which the district received for the transfer students involved. If the offending district continued to receive transfers in violation of the order, the TEA would warn the district that its accreditation was in danger and lift accreditation if the district did not come into compliance within ten days.

Changes in School District Boundaries. Any district contemplating a change in boundaries (save for small Black districts consolidating with adjoining Anglo ones) was required to report its intention to the commissioner of education, the chief executive officer of TEA, who was to conduct an investigation into the effects of such a change. Any changes which created or reinforced a dual school system were to be disallowed. If the county or local school board concerned proceeded with proposed boundary changes which were in violation of the order, the average daily attendance funds for the entire district were to be withheld. If the

district still refused to rescind the boundary change, it would be notified that its accreditation was in danger and was to be lifted after ten days.

School Transportation. The defendants were forbidden to allow any bus routes which reinforced or renewed a dual school system. The TEA was required to reexamine annually all county and school district transportation systems to determine whether segregatory practices were being followed. If on investigation the TEA determined that a county or local district was in violation of the order, the Agency would be required to terminate state transportation funds to the offending district. If the situation continued, the Agency was to notify the district that its accreditation was in danger and to suspend accreditation if the offending district persisted after ten days.

Extracurricular Activities. The defendants were not to support any extracurricular activities which were discriminatory or segregative. The TEA was required to review the extracurricular activities of all school districts during its on-site accreditation visits. If violations were found, the district was to be warned; if violations continued, the district would lose its accreditation. In addition, the percentage of state funds granted the district under the Minimum Foundation Program (for salaries and operating expenses) would be reduced by 10 percent for each semester that violations continued.

Faculty and Staff. Discrimination in faculty and staff hiring, dismissal, and other personnel actions was forbidden. The TEA was required to examine the faculty and staff hiring practices of each district during accreditation visits. The school districts were required to develop a list of objective, nonracial criteria by which they would evaluate faculty and staff for promotion, assignment, dismissal, and other personnel actions. Any discriminatory employment practices were to be reported to the commissioner of education. If violations were found, the district was to be notified that it was in danger of losing its accreditation. If the violations continued, the district would lose its accreditation and the TEA would refuse to approve the district's application for state funds under the Minimum Foundation Program.

Student Assignment. The student assignment provisions of the order were stringent. The court ordered that the assignments of students to particular schools or classrooms not be based on race, color, or national origin. Each year, the TEA was to visit and review all school districts in the

state in which there existed schools with a minority enrollment of 66 percent or greater and determine whether or not these districts were in compliance with constitutional standards. TEA was further required to file a yearly report with the court identifying the districts reviewed under this provision, the steps each district was taking to eliminate racially identifiable schools, and what particular programs these districts had implemented to compensate for the educational inequities suffered by students in ethnically identifiable schools. These reports were to be filed with the Department of Justice and HEW and to be open for public inspection at TEA offices.

Curriculum and Compensatory Education. The TEA was required to conduct a study of the educational needs of minority children and to assist school districts in achieving a comprehensive and balanced curriculum. The report was to include recommendations for compensatory educational programs for minority pupils who suffered from ethnic isolation as well as curricular proposals designed to meet the needs of those students whose primary language was other than English.

Complaints and Grievances. The defendants were required to send to local and county educational agencies and districts a bulletin which would notify faculty, staff, and patrons of school districts of the availability of complaint and grievance procedures. These educational units were to post this bulletin in a public place and to ensure its availability during school hours.

Notification. The defendants were to notify the plaintiffs in all cases in which a school district was in a position of losing its accreditation or state funding because of its failure to comply with Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment.

Jurisdiction. The court retained jurisdiction in this matter.

Several general observations concerning the order under CA 5281 are pertinent here. One was the broad extent of its reach. Over a thousand school districts throughout the state were subject to its provisions. Moreover, the order was statewide, encompassing schools in the three other federal districts of Texas as well as the Eastern District--a fact which, as we shall see, later triggered significant litigation.

Another feature was the severity of the sanctions provided. Offending school districts were threatened not only with the cutoff of federal funds (provided for in the Civil Rights Act) but also with termination of several state funding programs without which few districts could survive--and ultimately with the lifting of accreditation.

A third and novel feature was the selection of the state education agency, a unit of the executive branch, as the vehicle for the implementation and enforcement of a judicial remedy. In adopting this mechanism, the court relied on the approach proposed by the federal attorneys. The order had to be general enough to cover the variety of fact situations presented by the numerous districts and different administrative practices across the state. At the same time, it had to be sufficiently detailed to afford effective protection to minority pupils, staff, and administrators. No court could itself directly supervise an order of this magnitude. The TEA, in the judgment of the federal attorneys, was a logical choice. It was already equipped with a number of real or potential sanctions--the authority to disapprove boundary changes, the supervision of student transfers, the power to withdraw accreditation, and the supervision of the disbursement of state funds to local school districts. As the state education agency, TEA had the potential administrative capacity, structure, and expertise to enable it to play a significant role in the dismantlement of the vestiges of a dual school system in Texas.[21]

THE APPEAL OF U.S. v. TEXAS

The scope of the order, and the remedies and sanctions it specified, came as a surprise to attorneys defending the State. One attorney who represented the State at the time observed that there was no inkling in the Texas Attorney General's Office that the suit would "end up with TEA being a police agency for Wayne Justice's court."[22] TEA, in their judgment, was only a nominal defendant. Other desegregation suits filed by the Justice Department in the previous year had named the Agency among the defendants; indeed, many of these cases had been styled U.S. v. TEA. The Texas Attorney General's Office, moreover, was involved in a number of other suits at the time. It simply did not have the manpower to mount an active defense and relied heavily, as a result, on the counsel for the defendant districts.[23]

Though initially reluctant, the State eventually appealed the order--partly due to pressure from members of the State Board of Education and the Commissioner of Education, J. W. Edgar.[24] The decision on the appeal was handed down by the Fifth Circuit Court of Appeals on July 9, 1971. The appellate court affirmed the orignal order of November 24, 1970, and also affirmed the order of April 20, 1971, with several modifications.[25]

With respect to the portion of the order concerning extracurricular activities and faculty and staff discrimination, the court provided that any school district which TEA threatened with termination of Minimum Foundation funds or withdrawal of accreditation would have the right to petition the district court for relief. With respect to the student assignment provision, the court ordered that addtional language be added. The order as modified prohibited the defendants from making assignments of students to schools, individual classrooms, or activities "on the basis of race, color, or national origin except where required to comply with constitutional standards" (emphasis added). The court also directed that the following general sentence be added: "Nothing herein shall be deemed to affect the jurisdiction of any other district court with respect to any presently pending or future school desegregation suits."[26]

These were, however, minor modifications; the vast bulk of the order was affirmed. In what amounted to a last minute effort, the State then appealed to the U.S. Supreme Court. Its application for a writ of certiorari, however, was denied.[27]

Other minor modifications of the order were entered by Judge Justice in the summer of 1973. Regarding student transfers, the court provided for several exceptions--including handicapped and special education students--and allowed transfers in cases where the minority or majority pupil percentage of the affected district would change by 1 percent or less. The court also added sanctions, previously lacking, to the student assignment section of the order--providing for withdrawal of Minimum Foundation Funds and accreditation from offending districts. Finally, the court added a new section forbidding any sales or leases of school district property which would encourage or maintain a dual school system.[28]

The effectiveness of this broad judicial desegregation remedy would, however, ultimately be determined not by the technical sophistication of the order itself but by the

instrument the court chose to implement it--the Texas Education Agency. Would, as the federal attorneys hoped, TEA respond to the order as a challenge and an opportunity for creative administration? Or, as some feared, would its past history and present political environment cause it to pay only lip service to the implementation of CA 5281? To these questions, and their answers, we now turn.

NOTES: CHAPTER 1

1. 447 F.2d 441 (1971).

2. Brown v. Board of Education, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

3. For a comprehensive discussion of the development of desegregation policy in the post-Brown period, see J. Harvie Wilkinson III, From Brown to Bakke: The Supreme Court and School Integration, 1954-78 (New York: Oxford University Press, 1979), pp. 79-160.

4. Ibid., p. 108.

5. 372 F.2d 836 (1966).

6. Ibid. at 868. Emphasis in original.

7. 391 U.S. 430 (1968).

8. Wilkinson, Brown to Bakke, p. 117.

9. Interview with J. D. Parish, former Daingerfield School Superintendent, Daingerfield, Texas, February 21, 1980.

10. Tex. Rev. Civ. Stat. Ann. art. 2742f (1931).

11. Interview with Alexandra Polyzoides, attorney in Office of General Counsel of HEW, Washington, D. C., March 10, 1980.

12. 321 F. Supp. 1043 (1970).

13. Ibid. at 1048.

14. Ibid. at 1052.

15. Ibid. at 1057.

16. Ibid.

17. Ibid. at 1060-62.

18. Six of these districts had consolidated before the case went to trial. It remained for the court to order the

annexation or consolidation of the remaining districts "in order to achieve meaningful desegregation and to create, at the same time, an administratively stable and educationally sound school district." Memorandum Opinion, May 11, 1971, 30 F. Supp. 235 (1971) at 238.

19. According to the federal attorneys involved in the case, the scope and specificity of the order was partly due to the fact that the Texas Education Agency, through filing the reports pursuant to the first order, had shown little imagination or creativity in suggesting appropriate remedies. (Interview with Polyzoides; interview with David Vanderhoof, former Justice Department attorney, Houston, Texas, January 31, 1980).

20. 447 F.2d 441 (1971), passim.

21. Interview with Polyzoides.

22. Interview with Pat Bailey, former Assistant Attorney General of Texas, Houston, Texas, February 21, 1980.

23. Ibid.

24. Interview with James McCoy, former Assistant Attorney General of Texas, Austin, Texas, March 7, 1980.

25. 447 F.2d 441 (1971).

26. Ibid.

27. 404 U.S. 1016 (1972).

28. Modified order, CA 5281 (E. D. Texas), 1973.

CHAPTER 2

IMPLEMENTING U.S. v. TEXAS: THE ROLE OF THE TEXAS EDUCATION AGENCY

INTRODUCTION

The Texas Education Agency (TEA) was created in 1949 under the provisions of the Gilmer-Aiken Act of that year. The agency is governed by the State Board of Education, whose members are elected from the state's congressional districts to overlapping six-year terms. The Board appoints the Commissioner of Education, the chief administrative officer of TEA, who is responsible for the overall administration of the State Department of Education.

The major responsibilities of TEA are similar to those of most state education departments--for example, accrediting local school districts; acting as a mechanism for the disbursement of state and federal funds in support of primary and secondary education; offering professional development and instructional services to local school districts; conducting statewide planning and evaluation; and related activities.

In assigning the implementation of U.S. v. Texas (better known as CA 5281) to TEA, Judge Justice placed a new responsibility on the Agency quite different from its traditional role. First, TEA has historically functioned (and been perceived by local school districts) as an agency designed to assist these districts, rather than as an agency of enforcement. Among its many tasks, only the accreditation function of the Agency involves substantial regulation, and even this duty is approached with great caution: only very rarely have individual districts been denied accreditation.[1] Second, TEA, bowing to a strong tradition of local autonomy, has hesitated to project a forceful state (much less federal) position vis-a-vis local school districts.

Third, before the issuance of the order under CA 5281, the Texas Education Agency was rarely involved in desegregation activities. After the landmark Brown decision in 1954, Texas was in an anomalous legal position. Federal law required the desegregation of schools, whereas state law (the Gilmer-Aiken Act) required segregation. In the summer of 1955, the State Board of Education responded by adopting a

statement of position which it sent to all districts: TEA would continue to fund local school districts whether or not they were desegregated.[2]

A major test of this policy came in September 1955, when several local school boards attempted to desegregate their districts in compliance with the Brown decision. These moves to dismantle the dual school system were contested by individuals in several of the districts concerned, who filed suit against the districts and TEA, seeking to overturn the State Board's decision to aid desegregated districts. The case concerned, McKinney v. Blankenship, eventually reached the state supreme court, which ruled unconstitutional all state statutes providing for segregation and voided certain provisions of the Gilmer-Aiken Act.[3]

From 1955 until 1964, when the federal Civil Rights Act was passed, TEA remained aloof from desegregation activities. Although officials from the U.S. Department of Justice urged that the Agency had legal authority for a role in facilitating desegregation, the State Board felt that this was the province of local school districts and individual plaintiffs. Reluctant to become involved in what it considered local affairs, TEA adhered to its traditional posture of providing educational and financial support. During this period, a few local school districts did desegregate, most often districts with small minority populations which found that maintaining a dual system was too costly.[4]

By the mid-1960s, the Civil Rights Act of 1964, an increasing volume of litigation, and enforcement efforts by the Office of Civil Rights (OCR) of the Department of HEW, increased the pace of desegregation in Texas schools. This in turn led the Agency to take a more active role. Title IV of the Civil Rights Act provided for states to render technical assistance to desegregating school districts, and when federal appropriations were made available in 1967, the State Board of Education requested and received federal funding for an Office of Technical Assistance (OTA) within TEA.

To head OTA, former Commissioner of Education J. W. Edgar appointed Gilbert Conoley, a former high school coach, teacher, and district superintendent who had been president of the County Superintendents' Association and whose background gave him ready access to the State's "good old boy" education network. Of the other two staff members appointed at the time, one was a Black and the other a

Mexican-American--creating a precedent for triethnic staffing of TEA's technical assistance function which was continued to the present day.[5]

As a parallel effort, the Texas Education Desegregation Technical Assistance Center (TEDTAC) was created in 1968. Housed at the University of Texas at Austin, it also provided assistance to a number of desegregating school districts throughout the state.[6]

From 1968 to 1971, the Office of Technical Assistance worked to support desegregation activities in local school districts, often in concert with officials from HEW. Conoley and his staff visited school districts and helped them develop desegregation plans. OTA often reviewed these plans with members of the HEW regional office before presenting them to the school districts concerned. The approach of the office was low-key and "facilitative." An attempt was made to establish OTA's credibility and its reputation as an office to which school districts could turn for help and assistance.[7]

THE IMPACT OF U.S. v. TEXAS

U.S. v. Texas brought a new emphasis to the Office of Technical Assistance and a new role for the Texas Education Agency. Whereas TEA was traditionally viewed by the school districts as providing a degree of protection from federal "interference," the Agency now became responsible for the implementation of a far-ranging desegregation order whose provisions were backed by administrative and financial sanctions which carried the force of law. The role of OTA as facilitator gave way to one of monitor and enforcer.

TEA did not receive the responsibility for administering the order with enthusiasm. Indeed, there is substantial evidence that its upper echelons, if not philosophically opposed to the order, gave it only grudging acquiescence. Many of the members of the State Board of Education whom we interviewed saw it as excessive federal involvement in state educational affairs.[8] At least one member of the Board disagreed with the intent of the order, arguing that it interfered with parental freedom to send children to schools of their choosing and provided a focus on "racial mixing" rather than on education.[9]

Some State Board members also resented the order because it specifically excluded them from appeals pertaining

to its implementation. Normally, the Board acts as an appeals body for issues which cannot be resolved at the commissioner's level; and their exclusion from this role did not sit well with most of the Board members.[10] Former Commissioner Edgar suggested that the State Board members not only resented the order but, because of their exclusion from its implementation, felt "personally insulted by it."[11]

The Commissioner of Education is beholden to the Board for his tenure and position. It is likely that the generally hostile reception which the order received from members of the Board influenced successive commissioners regarding its implementation. This attitude may help to explain the narrow construction and go-slow policy which TEA adopted in enforcing the order as well as the lukewarm support given at the higher administrative levels to the activities of the primary implementing office, the Office of Technical Assistance.

J. W. Edgar, Commissioner of Education when U.S. v. Texas was argued, observed that the order substantially changed TEA's role vis-à-vis local school districts throughout the state. The financial and accreditation sanctions provided by the order gave TEA regulatory authority which it had not previously possessed--especially the ability to remove state funding from offending school districts--and put it at loggerheads with those districts which were out of compliance. Another major change, in Edgar's view, was the requirement that TEA examine and then approve or deny the thousands of pupil transfers requested annually. Edgar saw as an especially salutary move the order's consolidation of several poor minority school districts with larger adjacent ones. The state legislature, bowing to strong local pressures, had never granted the agency the authority to force consolidation on local school boards.[12]

Commissioner Edgar appears to have taken a more sanguine view of TEA's new role in desegregation than several officials immediately beneath him who were most frequently involved in enforcing the order. The then-legal-counselor at TEA, Chester Ollison, volunteered that TEA did not particularly "like" the order under CA 5281 because it put the agency in the unwelcome position of enforcing compliance. TEA moved slowly and cautiously in its early enforcement attempts and "held off as long as possible" from forcing local school districts to comply with the provisions of the order. Ollison volunteered that after the decision came down, TEA got in touch with the Texas Attorney General's Office to see whether it were possible to "void" U.S. v. Texas.[13]

A second key position involved in implementation is the assistant (later associate) commissioner for administration, to which the Office of Technical Assistance reports. The Assistant Commissioner at the time of the order, Leon Graham, stated that he (and his colleagues) attempted to enforce the order yet be aware of the problems that many districts faced in coming into compliance. The approach, he suggested, was primarily one of persuasion: "We did not want to cut the districts' throats."[14] According to other observers, Graham, in private, took a less activist position. They recall his assertion that in implementing the order, TEA's policy would be one of "benign neglect."[15]

Commissioner Marlan Brockette, who succeeded Edgar in 1974, summed up TEA's early posture toward enforcement. "Our approach was soft touches and smooth operations, so that local officers wouldn't be torn up by the force of a central office."[16]

Soon after the order was issued, TEA sent every school district in the state a copy and then conducted group and individual meetings with the various district superintendents to explain details. TEA participants in these early meetings were Assistant Commissioner Graham and Gilbert Conoley, head of the Office of Technical Assistance. They were frequently joined by a consultant from the Dallas regional office of the OCR. These officials explained the requirements of the order and its implications with respect to the current situation in each district. Because of the specificity of the order, administrative guidelines were not considered necessary.

In the first year or so of implementation, TEA adopted several procedures which had the effect of restricting enforcement. First, those districts already under separate court orders were placed beyond the normal monitoring of the Office of Technical Assistance. A member of OTA was allowed to visit a "court-order" district only if a specific complaint concerning that district had been received. Second, random, unannounced visits to possibly offending districts were prohibited. Third, staff of the Office of Technical Assistance were (and are) allowed to make field visits only (1) in response to the order's requirement for yearly inspection of those districts where at least one campus has a minority enrollment of 66 percent or greater; (2) when investigating specific complaints received from a district; and (3) as provided by the order, when accompanying a TEA accreditation team on a "coordinated monioring visit." In

this latter case the focus of OTA is on problems of discrimination in extracurricular activities and in staff and faculty hiring patterns and practices.

To enforce the order, a moderate expansion in the staff of the Office of Technical Assistance staff was provided. At no time, however, has that office, including secretarial positions, numbered more than fourteen individuals. The bulk of the work of visiting districts is borne by the eight to ten "technical assistant consultants."

ENFORCEMENT PROCEDURES

The majority of the enforcement and monitoring requirements imposed by the order under CA 5281 are administered by the Technical Assistance Division (TAD), formerly the Office of Technical Assistance. Due to administrative convenience and other considerations, however, several sections of the order are handled by other units of the TEA, sometimes in collaboration with TAD. The following is a brief description of the procedures by which the various sections of the order are enforced within TEA.

Section A: Student Transfers. The review of requests for student transfers is the responsibility of the Division of State Funding of TEA. Prior to the remedial order, county superintendents were responsible for approving all transfers among districts. After it was issued, the State Board of Education created a Division of State Funding, a unit within the Finance Division, to examine requests for student transfers. The early work of the Division was intensive and laborious since each request for transfer, which numbered thousands annually, had to be examined to see whether, as provided in the original order, it would change "appreciably" the ethnic makeup of the district. The workload of the Division decreased somewhat due to the later modification of the order which forbade transfers if the ethnic composition of a district were to be altered by more than 1 percent.

In 1976, the role of the Division of State Funding changed. The responsibility for reviewing transfer requests was given back to the school districts, with the Division reviewing the ethnic composition of each district in an annual fall survey of enrollment. Based on this review, the Division notifies those districts which appear to be in violation of the 1 percent rule. A visitation may then be scheduled for members of TAD staff to follow up with the

district concerned. TAD also becomes involved in reviewing requests for student transfers when complaints concerning transfer policy are received directly from the districts.

Our research suggests that in some cases, school districts which have accepted transfers in violation of the order and are so notified continue to carry these students as "ineligibles," thus foregoing the state funds based on the average daily attendance of these students. Although it is difficult to assess how widespread this practice is, withdrawal of state funds based upon average daily attendance appears ineffective as a deterrent to the acceptance of ineligibles by some school districts.

Section B: Changes in School District Boundaries. On receiving notification of proposed changes in school district boundaries, TAD determines the number and ethnic backgrounds of the students potentially involved. A decision is then made as to whether the change would be in compliance with the order. On occasion an investigative team may be sent to the district and, if the district is found in violation of the order, it is so notified.

Several proposed changes have been rejected by TEA on the basis of TAD investigations. Though boundary changes were of occasional importance in the early years of the order's implementation, the issue has become fairly dormant in the last several years.

Section C: School Transportation. The monitoring of the ethnicity of various bus routes is the responsibility of the Transportation Division of TEA. Reviewing the ethnic composition of bus routes had actually begun prior to the remedial order since some federal programs in support of school transportation required such review. After the order was issued, the Transportation Division examined pupil ethnicity reports from all districts. A number were found to be running essentially dual routes but came rather quickly into compliance because of the financial sanctions which could be imposed.

Currently, any district wishing to revise a particular route must file a request which is reviewed and approved or rejected by the Transportation Division. Individuals from the Division's staff may visit the districts in question and in some cases make head counts of the ethnicity of students riding particular routes. If the Transportation Division staff find that a district is out of compliance,

the district must develop plans for changes in routes. If disagreement over routes persists, the issue may be negotiated between the district and the Technical Assistance Division whose consultants also monitor the ethnicity of bus routes in response to specific complaints.

Section D: Extracurricular Activities. Enforcement of this section is the responsibility of the Technical Assistance Division, whose consultants accompany accreditation teams and examine extracurricular participation in a district as a part of a coordinated monitoring visit. The consultants review school board policies, requirements for admission to various activities, the ethnic makeup of those activities, and rules and regulations pertaining to extracurricular participation. Yearbooks, files, and interviews are used to determine whether certain activities discriminate against minorities. Violations are brought to the attention of the offending district by the consultant or the head of TAD. Continued violations are referred to the Commissioner of Education.

Problems of discrimination in extracurricular activities were widespread in the first several years of enforcement of the order, but seem to be less frequent now. Examples of some continuing difficulties encountered in this area are found in the next chapter.

Section E: Faculty and Staff. Enforcement of this section of the order is also the province of the Technical Assistance Division. Consultants from the Division visit districts during the coordinated monitoring process, examine the districts's files and data previously submitted, and calculate the number and ethnicity of teachers and staff from three years prior to the first year of desegregation. If there appears to have been a decrease in the number of minority teachers or staff, the reasons for departure of all minority personnel are investigated. The consultants also examine staffing patterns to determine whether the percentage of minority teachers in each campus generally reflects their proportion in the district as a whole.

For those districts where it is deemed necessary, TAD requires the development of affirmative recruitment plans. Evidence of continued discriminatory practices concerning faculty and staff hiring and utilization are referred to the Commissioner of Education. (Difficulties in enforcing this section of the order are discussed in the next chapter.)

Section F: Student Assignment. Of all the parts of the order, this section requires the most effort in monitoring and implementation. Each year TAD examines the ethnic composition of all districts and campuses in the state. On-site visitations, as required by the order, are conducted in those districts which have one or more campuses with 66 percent or more minority students. These visitations, as the reader will recall, do not include those 66 percent minority campus districts which are currently under litigation or a separate court desegregation order. The technical assistant consultants interview superintendents and principals regarding assignment of students. In cases where student transfers can reduce minority concentrations in one or several campuses, the Technical Assistance Division suggests several remedial plans for the district's consideration.

Since the order has been issued, some thirty-five to forty districts under its jurisdiction which previously had one or more 66 percent minority campuses have eliminated them. The majority of the some two hundred remaining districts with 66 percent minority campuses are those in which the minority enrollment of the district as a whole is so great as to preclude the possibility of any one campus having fewer than 66 percent minority students. Yearly visits to these remaining districts consume a vast amount of energy, staff time, and other resources of the TAD.

As we shall see later, there remain continuing difficulties in enforcing this section of the order. In several cases where sanctions have been threatened against districts in violation of this section, the district concerned has taken TEA to court outside the Eastern District and secured an injunction against the enforcement of the prescribed sanctions.

Section G: Curriculum and Compensatory Education. This section of the order, largely its bilingual component, was under separate litigation at the time this report was prepared. An order concerning bilingual education has recently been handed down by the court. We were unable to discover any ongoing mechanism for enforcement of this section within TEA.

Section H: Complaints and Grievances. This section is also administered by the Technical Assistance Division. Shortly after the order was handed down, OTA informed each district of the procedures by which individuals could file a

complaint arising from ethnic discrimination. District offices and schools were instructed to post copies of these procedures (in English and Spanish) in conspicuous places. Responding to complaints and to information developed by site visits where a resolution is not reached, teams from the Division conduct further on-site investigations. Findings are referred to the Commissioner of Education.

PATTERNS AND PROBLEMS OF IMPLEMENTATION

The observations in this section should be weighed in the context of several background factors. First, those districts in Texas which are still highly segregated are largely those which are now in litigation or under court orders separate from CA 5281. Through both judicial and administrative interpretation, these districts are beyond the scope of TEA's enforcement powers. Second, of those one thousand plus districts under the jurisdiction of the order, the vast majority desegregated during the mid- to late 1960s; a substantial number desegregated in the early years of the order; and only a few still exhibit the remnants of a dual school system. Third, of those roughly two hundred districts which are in potential violation of the student assignment provisions of the order (i.e., which have one or more campuses of 66 percent or more minority students), the vast majority have districtwide minority concentrations of over 66 percent.[17] Finally, the majority of the remaining districts appear to be in compliance with the student assignment provisions. Thus in many respects, the current role of TEA is one of surveillance to ensure that the compliance achieved to date is not eroded.

This said, however, problems of implementation still remain--problems whose roots may be traced to a passive approach to enforcement taken by the leadership of TEA. Several factors help explain this passivity. For one, the very notion of centralized enforcement (especially in desegregation) runs counter to the history and traditions of public education in Texas, which carries a strong emphasis on local control and the autonomy of the "independent" school district. This is reflected in both the philosophy and structure of primary and secondary education in the state as well as in its administrative culture.

The commissioners of education and their deputies have been steeped in this tradition. Their professional careers

have socialized them to defer to norms of strong local control and often made them suspicious of centralized administration of education, or "interference" in the affairs of local school districts, and of only grudging acceptance, for the most part, of the change in federal policy dating from the Brown decision. As one former commissioner put it, his oath of office was to the state; nothing in it referred to the federal government or the U.S. Constitution.[18] This orientation on the part of TEA's leadership echelon--its commissioners, deputy commissioners, and associate commissioners--may help explain why there appears to be a lack of support for active and vigorous execution of the order at the agency's highest levels.

The Technical Assistance Division, the unit principally responsible for implementing the order, thus functions in an administrative environment which is largely indifferent, if not hostile, towards its mandate. This is reflected in some early decisions made by TEA commissioners restricting the procedures for field monitoring of the implementation of the order. Only those districts falling under the 66 percent minority campus provision would be visited on a regular basis. Other districts could be investigated only in response to a complaint received from a citizen in that district or, as the order provided, as a part of a coordinated monitoring visit, of which some two hundred are conducted annually. This means that a district under the order but from which no complaint is received would be visited normally only once in five to seven years. Further, one recalls that unannounced visits to districts are not permitted.

Also restricting TEA's enforcement is the relatively small staff and meager funding allotted to TAD, whose ten to twelve field officers ("consultants") are responsible for reviewing the activities of some one thousand school districts. In spite of frequent requests by the director of this Division for additional staff and funding, these requests have been denied.

The upper echelons of TEA have proved less than fully supportive of TAD's enforcement initiatives. In some cases, recommendations by the Technical Assistance Division for the imposition of sanctions due to noncompliance have been rejected by the commissioner. In others, extensions of deadlines for compliance imposed by TAD have been negotiated between the commissioner's office and the particular school district concerned.[19]

Another factor limiting the enforcement has been the success of various school districts in appealing proposed sanctions to federal courts outside the Eastern District. Other judges have granted injunctions against imposition of TEA sanctions in actions brought by such districts as Gregory-Portland, Northside, and Aldine.[20] Such decisions have had a chilling effect on the agency's enforcement efforts and on the morale of the staff.

Enforcement is further limited not only by the successful recourse of offending districts to courts of other jurisdictions but also by the seeming ineffectiveness of some sanctions provided by the order. Indeed, the most severe sanction--termination of state Minimum Foundation Funds and withdrawal of accreditation--have rarely been threatened. At the other extreme, such sanctions as the threat of withdrawal of state funds based on average daily attendance of "ineligible" transfers is a cost which some districts appear willing to bear. (As noted above, several districts carry ineligible transfer pupils on their rolls and forego the state funds based on average daily attendance.) In some more wealthy districts, local revenues are a substantial proportion of the school budget. State funds, though a helpful increment, are not indispensable.[21]

The most potent enforcement mechanism, the withdrawal of accreditation, has never been applied in a case involving the order under CA 5281. Indeed, only two or three districts throughout the state lost accreditation during the 1970s, none in relation to the order. Especially since a statute passed by the Texas legislature in 1976 provides for a withdrawal of all state funds from those districts which lose their accreditation, this sanction is so severe (and so controversial) that the political echelons of TEA, including the Office of the Commissioner and the State Board of Education, are loathe to recommend or enforce a withdrawal of accreditation. The end result is, according to the former director of the Technical Assistance Division, that the Agency has "no real sanctions."[22]

Given a hostile administrative environment, legal action on the part of some offending districts, and the difficulty of applying sanctions, the Technical Assistance Division has been forced to adopt a slow, cautious, and conciliatory approach toward enforcement. This is reflected in the terminology used to describe the activities of OTA, for example, an emphasis on "assistance" and not "enforcement." Monitoring visits to the districts are, in the terminology of the agency, "visitations" and not "investigations."[23]

The resulting approach of TAD has been an effort to nudge offending districts into compliance through cajoling, "jawboning," and quiet mediation--relying on the personal negotiating skills and influence of the Technical Assistance Division staff and its director. On those occasions when this approach has failed, the issue escalates from a conflict between a district and TAD to the commissioner's level, or to another federal district court; thus recalcitrant districts have frequently been able to avoid the imposition of sanctions.

NOTES: CHAPTER 2

1. Interview with Ben Branch, Chief, Accreditation Division, Texas Education Agency, Austin, Texas, December 6, 1979.

2. Interview with Dr. J. W. Edgar, former Commissioner of Education, Austin, Texas, February 29, 1980.

3. McKinney v. Blankenship, 154 Tex. 632; 282 S.W.2d 691 (1955).

4. Interview with Edgar.

5. Interview with Gilbert Conoley, Director, Technical Assistance Division, Austin, Texas, October 30, 1979.

6. In contrast to the Office of Technical Assistance, the focus of TEDTAC was largely on developing cultural awareness among students, teachers, and administrators and conducting training sessions with majority and minority groups. (Interview with Peter Williams, former Director of TEDTAC, Austin, Texas, December 11, 1979.)

7. Interview with Conoley.

8. Interviews with E. R. Gregg, W. H. Fetter, and Paul Matthews, members of the State Board of Education, Austin, Texas, May 9, 1980.

9. Interview with Fetter.

10. Interview with James Binion, member of the State Board of Education, Austin, Texas, May 8, 1980. Phone interview with Joe Kelly Butler, Chairman, State Board of Education, Houston, Texas, May 6, 1980. The only Black member of the State Board, Dr. Joseph Gathe, observed that the Board would have preferred the order not been handed down. "They saw it as a burden and opted for minimum compliance while still being within legal bounds." (Phone interview with Dr. Joseph Gathe, member, State Board of Education, Houston, Texas, May 8, 1980.)

11. Interview with Edgar.

12. Ibid.

13. Interview with Chester E. Ollison, former General Counsel, Texas Education Agency, Austin, Texas, November 19, 1979.

14. Interview with Leon Graham, former Assistant Commissioner for Administrative Services, Texas Education Agency, Austin, Texas, April 3, 1980.

15. Graham's use of this term was cited by two interviewees in off-the-record comments.

16. Interview with Marlan Brockette, former Commissioner of Education, Texas Education Agency, Austin, Texas, April 10, 1980.

17. A detailed discussion of these districts will be found in the next chapter.

18. Interview with Brockette.

19. An example is the success of the Marshall Independent School District in securing the commissioner's permission to delay the closing of several 66 percent minority campuses. (Correspondence between the Commissioner of Education and the Superintendent of the Marshall School District [January 15, 1980 and February 13, 1980], TEA files; interview with Conoley.

20. Interview with William Bednar, former Legal Counsel, Texas Education Agency, Austin, Texas, February 5, 1980.

21. Interview with Robert Alexius, consultant, Technical Assistance Division, Austin, Texas, November 29, 1979. The Snyder Independent School District is a case in point.

22. Interview with Conoley, April 7, 1980.

23. Interview with Ollison.

CHAPTER 3

THE IMPACT OF U.S. v. TEXAS

INTRODUCTION

We turn now from a consideration of the genesis of U.S. v. Texas and the role of the Texas Education Agency to an assessment of the order's effectiveness and its implementation in the field. The material for this evaluation includes statistical data maintained by the TEA, our computer analysis of this data, interviews with TEA officials and other knowledgeable observers, and data gathered from site visits to nineteen independent school districts around the state. Before moving to a study of the implementation of the order in the individual districts, however, it is necessary to examine its scope in a broader context.

There are currently slightly over 1,100 independent school districts in the state of Texas--subject to the order and thus monitored by the Texas Education Agency. Excepted from enforcement of sanctions provided by CA 5281 are those districts classified by TEA as "court-order districts." These districts are either under separate desegregation orders or presently in litigation. As of 1981, some forty-seven such districts, shown in Table 1, were identified by TEA.

This list includes a number of the larger districts in the state, among them Austin, Dallas, Fort Worth, Houston, and Lubbock. In 1979-80, pupil attendance in kindergarten through grade 12 in these court-order districts was roughly 925,400, compared to a statewide pupil total in these same grades of 2,873,300. Thus close to a third of the pupil population of the state is currently beyond the enforcement provisions of the order. As we shall see, many of these same districts have historically been more heavily segregated than those districts subject to the active enforcement of the order.

DESEGREGATION IN TEXAS DURING THE 1970S: A STATISTICAL PERSPECTIVE

As noted earlier, most school districts in Texas had taken steps to eliminate their dual school systems by the late 1960s. Yet, substantial segregation remained, especially in

TABLE 1. Court-Order Districts in Texas, 1981

Aldine	Lufkin
Austin	Lubbock
Beaumont	Madisonville
Calvert	Marlin
Carthage	Midland
Corpus Christi	New Braunfels
Dallas	Northside
Ector County	Pecos-Barstow-Toyah
El Paso	Port Arthur
Elysian Fields	Raymondville
Ferris	Richardson
Forth Worth	San Angelo
Gelena Park	San Augustine
Galveston	San Felipe-Del Rio
Garland	South Park
Gregory-Portland	Sulphur Springs
Hearne	Temple
Houston	Texas City
Jefferson	Tyler
Karnack	Uvalde
Katy	Waco
Kilgore	Wichita Falls
Klein	Wilmer-Hutchins
La Vega	

Source: Texas Education Agency, 1981.

districts in areas of the state--east, central and south Texas--which contain substantial minority populations. What have been the trends since the early 1970s, especially in those districts under the order?

To measure changes in desegregation over time, it is useful to determine the extent to which each campus in a particular district reflects (or does not reflect) the ethnic composition of the pupil population of the district as a whole. That is, if a district is 70 percent Anglo, 20 percent Hispanic, and 10 percent Black, to what extent does each of the schools in that district reflect this distribution?

A statistic used to explore this question is the "index of dissimilarity," which measures the extent to which the various campuses in a school district reflect the racial distribution of students within the district as a whole. This index ranges from zero to one. An index of zero indicates a situation in which each campus has exactly the same minority/majority pupil ratio as the total school population in that district. An index of one indicates complete racial isolation, a dual school system. Take for example a small district which has two elementary schools, each K-6, and a racial composition of 60 percent Hispanic and 40 percent Anglo. If each of the schools has a 60/40 mix, the index will be zero; if one is exclusively Anglo and the other exclusively Hispanic, the index will be one. In reality, of course, few districts are so clear cut, but range between 0 and 1. As used in the literature on desegregation, an index of 0 to .20 indicates districts which are relatively well integrated; a range of .20 to .40 indicates moderate segregation; a range of .40 to .60 indicates serious segregation; and a range of .60 to 1.0 indicates serious racial isolation.[1] (Those districts which are unitary--i.e., with only one campus each for, say, K-2, 3-4, 5-6, 7-9, and 10-12--are by definition perfectly reflective of the racial composition of the district.)

Since elementary schools are most likely to indicate the pace of desegregation--many districts have two to three elementary schools but only one junior and one senior high school--our analysis covers grades K through 6 only. Using figures compiled by TEA, we computed the index of dissimilarity for all school districts in Texas having at least two elementary schools for the same grade or grades (i.e., all nonunitary districts) for two time periods, 1970-71 and 1978-79. The results are shown in Table 2.

TABLE 2: Index of Dissimilarity, Texas Nonunitary School Districts (K-6)

Year	Median Index	Percentage of Districts .40 and above	Number
1970-71	.10	17	514
1978-79	.07	9	558

As the table indicates, there has been a decline in the median index of dissimilarity (i.e., in segregation) statewide over the period in question. Further, the percentage of districts with an index of .4 and above (those districts which are relatively segregated) has declined by nearly half over this same period.

More instructive for our purposes is a comparison of those districts under the order with those districts under separate court orders. This comparison is drawn in Table 3. The data suggest several trends. For one, the major vestiges of segregation in Texas are found in those districts, many of them quite large, which are under separate desegregation orders or in litigation. As of 1979, for example, Beaumont had a dissimiliarty index of .52, Dallas an index of .55, Houston an index of .67, and Lubbock an index of .56. In these same court-order districts, however, there has been gradual integration during the 1970s. Whereas two-thirds showed substantial segregation in 1970 (an index above .40), that proportion had declined to slightly under half by 1979.

Those districts under the order, on the other hand, though much more numerous, exhibit substantially less segregation. Of these districts, 12 percent in 1971 and 6 percent in 1979 had an index greater than .40. And the median index of dissimilarity was much lower than in those districts under separate court order--.10 in 1971 and .07 in 1979. One should, moreover, be aware that many of the districts under CA 5281 which exhibit relatively high indices of dissimilarity are small districts with very high proportions of minority students. As the proportion of minority students in a district increases to 90 or 95 percent, it may become increasingly difficult to distribute the small number of Anglo students equally among the various schools--especially if the district has only a few elementary campuses. For example, Crystal City, whose K-6 pupil population was 98.8 percent minority in 1979, showed an index of .71. Mission, with 94 percent minority enrollment, showed an index of .67.

This does not mean, however, that there are not still substantial problems of segregation in some of those districts subject to the order. As we shall see below, there remain a number where the proportion of minority students is relatively low but which still show significant patterns of segregation.

TABLE 3. Index of Dissimilarity, Texas Nonunitary School Districts (K-6) by Court Order and CA 5281 Districts

Year	Median Index	Percentage of Districts .40 and above	Number
	Districts under Separate Court Order		
1970-71	.59	66	43
1978-79	.39	48	42
	Districts under CA 5281		
1970-71	.10	12	471
1978-79	.07	6	516

THE PROBLEM OF THE 66 PERCENT MINORITY CAMPUS DISTRICTS

Because of the student assignment provision of the order, much of the effort of TEA in implementing the remedial order has been directed toward those districts with one or more campuses having 66 percent or more minority students. A list of these districts, numbering 196 in 1981, appears in Table 4.

A U in parenthesis next to the district name indicates a unitary district, that is, one having only one school at any grade or series of grades. These districts are by definition as fully integrated as possible. Fully ninety-five, nearly half, of the 66 percent districts fall in this category. An M indicates that the proportion of minority elementary pupils in the district is 66 percent or higher--a situation which obviously leads to one or more 66 percent minority campuses. Short of consolidation with possibily adjacent districts of high majority enrollment (the opportunity for which is almost nil), it remains impossible for districts of high minority concentration to contain other than 66 percent minority campuses. Another thirty districts, those followed by C are under separate court order and are thus, as we have seen, not subject to the sanctions provided by the order under CA 5281.

Thus of the nearly two hundred 66 percent minority campus districts, only some two dozen would seem to warrant continued scrutiny concerning the student assignment provision of the order. Data on these districts are displayed in Table 5.

As the data suggest, a substantial number of these districts appear to exhibit moderate to high patterns of segregation. Almost half of them show indices of dissimilarity of over .20, and six show indices of over .40.

In addition to the 66 percent minority campus districts, as identified by the order, are others which exhibit patterns of continued segregation--though having no campus of 66 percent or greater minority enrollments.

As suggested earlier, the significance of the dissimilarity index declines as one approaches a situation in which a district is made up solely of, say, Anglo or Hispanic pupils--since the few pupils of the minority race in the district are unlikely to be distributed equally among the various elementary campuses. However, one can identify twenty districts where the Anglo pupil population in grades K-6 ranges from 50 to 80 percent, where there are no 66 percent minority campuses, but where a dissimilarity index of .20 and above appears. (See Table 6.)

TABLE 4. Status of Districts with Campuses Having 66 Percent or More Minority Pupils, 1981

Abilene
Aldine (C)
Alice (M)
Allamcore (U)
Amarillo
Anthony (U)
Asherton (U)
Austin (C)
Austwell-Tivoli (U)
Balmorhea (U)
Banquete (U)
Bay City
Beaumont (C)
Beeville
Ben Bolt-
Palito Blanco (U)
Benvanides (M)
Big Spring
Bloomington (M)
Bovina
Brackett (U)
Brooks (M)
Brownfield
Brownsville (M)
Burkeville (U)
Bryan
Calvert (U)
Canutillo (U)
Carizzo Springs (M)
Carta Valley (U)
Charlotte (U)
Corpus Christi (C)
Cotton Center (U)
Cotulla (M)
Crockett
Crystal City (M)
Culberson Co. (M)
Dallas (C)
Dell City (U)
Dilley (U)
Dimmitt (U)
Donna (M)
Driscoll (U)
Dumas
Eagle Pass (M)
Ector Co. (C)
Edcouch-Elsa (U)
Edgewood (M)
Edinburg (M)
El Paso (C)
Fabens (U)
Fort Bend
Fort Worth (C)
Freer (U)
Ft. Hancock (U)
Ft. Stockton (M)
Galveston (C)
Garland (C)
Gatesville (U)
Goose Creek
Goree (U)
Giddings (U)
Hale Center (U)
Harlandale (M)
Harlingen (M)
Hart (U)
Hays Cons.
Hereford
Hidalgo (U)
Hondo (U)
Houston (C)
Jim Hogg Co. (U)
Juno (U)
Karnack (U/C)
Karnes City (M)
Kendleton (U)
Kenedy Co. (M)
Kenedy ISD (U)
Kingsville (M)
Kress (U)
La Feria (M)
La Gloria (U)
La Joya (M)
La Marque
La Pryor (U)
La Villa (U)
Lakeview (U)
Lamar Cons.
Lamesa
Laneville (U)
Laredo (M)
Lasara (U)
Laureles (U)
Levelland
Lockhart (U)
Lockney (U)
Lorenzo (U)
Los Fresnos (M)
Lubbock (C)
Lyford (U)

Key: (U) = Unitary districts

(M) = Districts with 66 percent or higher minority pupil population (K-6)

(C) = Districts under separate court orders

(*) = No elementary schools in district

Continued on p. 37

TABLE 4. CONTINUED

Marathon (U)
Marfa (M)
Marshall
Mathis (M)
McAllen (M)
McFaddin (U)
Meadow (U)
Mercedes (M)
Midland (C)
Mirando City (U)
Mission (M)
Monte Alto (U)
Morton (U)
Mumford (U)
New Home (U)
North Forest (M)
Northside (C/M)
O'Donnell (U)
Oakwood
Odem-Edroy (U)
Olton (U)
Pasadena
Pawnee (U)
Pearsall (U)
Pecos-Barstow-Toyah (C)
Petersburg (U)
Pharr-San Juan-
Alamo (M)
Plainview
Point Isabel (M)
Port Arthur (C)
Poteet (U)
Premont (U)
Presidio (M)
Progreso (U)
Ramirez (U)
Raymondville (C)
Rice Cons. (U)
Rio Grande City (M)
Rio Hondo
Robstown (M)
Rocksprings (U)
Roma (M)
Ropes (U)
Royal (U)
Runge (U)
Sabinal (U)
San Angelo (C)
San Antonio (M)
San Benito (M)
San Diego (U)
San Elizario (U)
San Felipe-Del
Rio Cons. (C)
San Isidro (U)
San Marcos (M)
San Perlita (U)
Santa Cruz (U)
Santa Gertrudis (U)
Santa Maria (U)
Santa Rosa (U)
Seguin
Sharyland (U)
Sierra Blanca (U)
Sinton (M)
Smiley (U)
Snook (U)
Snyder
Socorro (U)
South Plains (U)
South Park (C)
So. San Antonio (M)
South Texas (*)
Southside (U)
Southwest (M)
Taft (U)
Temple (C)
Texarkana
Texas City (C)
Tornillo (U)
Tuloso Midway
Tulia
Tyler (C)
United (M)
Uvalde Cons. (C)
Valentine (C)
Valley View (U)
Victoria Cons. (C)
Waco (C)
Waelder (U)
Webb Cons. (U)
Weslaco (U)
West Oso (U)
Wharton (U)
Wichita Falls (C)
Wilmer-Hutchins (C)
Wingate (U)
Ysletta (M)
Zapata (M)

Key: (U) = Unitary districts

(M) = Districts with 66 percent or higher minority pupil population (K-6)

(C) = Districts under separate court orders

(*) = No elementary schools in district

TABLE 5. Critical 66 Percent Minority Campus Districts, 1978-79

Name	K-6 Pupil Population	Percentage Minority Pupils (K-6) in District	Index of Dissimilarity
Abilene	9,579	30	.41
Amarillo	14,354	22	.39
Bay City	2,182	49	.14
Beeville	2,172	62	.18
Big Spring	2,613	45	.30
Bovina	293	65	.07
Brownfield	1,596	58	.08
Bryan	5,000	45	.15
Crockett	1,005	59	.06
Dumas	1,918	31	.48
Fort Bend	10,719	36	.38
Goose Creek	8,688	31	.33
Hays Cons.	1,119	35	.59
Hereford	2,836	61	.10
La Marque	2,748	56	.06
Lamar Cons.	4,512	59	.11
Lamesa	1,694	65	.10
Levelland	1,824	40	.23
Marshall	3,452	49	.49
Pasadena	21,125	26	.27
Plainview	3,401	56	.19
Sequin	2,856	59	.15
Snyder	1,914	34	.49
Texarkana	3,147	36	.49
Tuloso Midway	1,370	44	.17
Tulia	825	49	.07

TABLE 6. Non-66-Percent-Minority Campus School Districts with Anglo K-6 Enrollments from 50 to 60 Percent Showing Moderate to Strong Segregation Patterns, 1978-79

District	Percentage Anglo Enrollment	Index of Dissimilarity
Alamo Heights	74	.49
Brazosport	73	.36
Brownwood	77	.33
Comal	80	.31
Corsicana	65	.31
Dickinson	73	.21
Galena Park*	74	.42
Grand Prarie	71	.23
Greenville	68	.31
Gregory-Portland*	65	.57
Hardin-Jefferson	78	.31
Industrial	77	.28
Jacksonville	71	.25
Killeen	67	.21
Longview	58	.22
McKinney	66	.25
North East	75	.30
Paris	69	.29
Sweetwater	63	.36
Wall	79	.23

*Court-order district.

THE ADMINISTRATION OF CA 5281 IN THE FIELD: PATTERNS AND PRACTICE

To explore the administration of the order in the field, we visited nineteen independent school districts across the state. In selecting the districts for study, we were guided by the advice of staff in the Technical Assistance Division as to which districts provided good examples of certain types of violations or problems with enforcement. We were also mindful of the need for some geographic distribution, especially in south and east Texas, and for some variety in the size and ethnic makeup of the districts chosen. The districts visited do not represent a "scientific" random sample of districts statewide, but they do provide material for case studies and suggest some possible patterns. The districts and their status under CA 5281 appear in Table 7.

In each of the districts, we interviewed, where possible, the superintendent or his deputy; school principals and assistant principals at campuses which were out of compliance or which had reported problems with certain sections of the order; teachers; and where feasible, school board members and community leaders particularly concerned with the order. The number of interviews varied with the size of the district and the availability of officials, but averaged five to eight per district. We first discuss findings concerning implementation of various sections of the order and then turn to some general perceptions of the role of the Technical Assistance Division held by the districts.

Student Transfers. In two of the districts visited, Karnack and Wilmer-Hutchins, student transfers were or had been an issue of concern. In the case of Wilmer-Hutchins, TEA refused to approve the transfer of Anglo students to outlying districts since such transfers would increase minority concentrations in the district.[2]

The case of Karnack is more complex. In 1977-78, the superintendent of schools filed a complaint with TAD to the effect that certain Anglo students who were residents of Karnack ISD were attending school in neighboring Marshall. (The majority of school board seats were, at the time, held by ethnic minority members.) TAD investigated but was unable to substantiate the allegations. (Two persons who were members of the board at the time stated to us that they felt the investigation had been superficial.) The district then filed suit, but according to the attorney who represented the district at the time, the suit was dropped after a predominantly Anglo school board was elected late in 1978.[3] TAD officials, when asked about the issue, stated they assumed the

TABLE 7. Name and Status of Sample Districts

District	One or more 66 Percent Minority Campus(es)	Under Separate Court Order
Brownsville	X	
Crockett	X*	
Dangerfield		
Galveston	X	X
Harleton		
Karnack	X	X
Lockhart	X	
Marshall	X	
New Braunfels		X
Northside	X	X
Plainview	X	
Round Rock		
San Felipe-Del Rio	X	X
San Marcos	X	
Smithville		
Snyder	X	
Taylor		
Victoria	X	X
Wilmer-Hutchins	X	X

*Prekindergarten program.

matter was still in litigation and had thus conducted no follow-up investigation of the charges.

Changes in School District Boundaries. In three of the visited districts, boundary changes came about as a result of consolidations. Daingerfield ISD annexed Cason ISD pursuant to the relief ordered in CA 5281, and Del Rio ISD was consolidated with San Felipe under an additional order entered under CA 5281. Crockett ISD annexed Porter Springs ISD with the approval of TEA.

Wilmer-Hutchins ISD attempted to dissolve into several smaller districts in 1974. The district includes two (predominantly Anglo) towns of Wilmer and Hutchins, plus a largely Black unincorporated area in Dallas County. In June 1974, the two cities held elections to establish separate municipal school districts for the two towns and a third district for the unincorporated area. The reorganization would have produced Anglo pluralities in Wilmer and Hutchins and a 96 percent black district from the remainder of the area. In July 1974, TEA Commissioner Brockette notified the mayor of Hutchins that the proposed plan would be in violation of the order and denied the request for recognition and accreditation for the new districts. The school board filed suit against TEA and the State of Texas, arguing that the increase in Black pupils was the result of state action (in the placement of low-income housing units in the district). The board lost the suit in district court and in the court of appeals, and the reorganization did not go into effect.[4]

School Transportation. Problems with discrimination in school transportation routes were not encountered in the sample districts. The one possible exception was Karnack, where two former members of the school board alleged that segregated bus routes had been in effect during their time on the board. They further volunteered that they had brought this to the attention of TEA but that no investigation had been made.[5]

Extracurricular Activities. A number of the districts visited reported that minority participation in extracurricular activities was a concern. In several instances, programs or guidelines pertaining to extracurricular activities were found by TEA to be in violation of the order, and the district concerned came into compliance. Harleton ISD previously had an all-Black basketball team, all-Anglo majorettes, and dual (Anglo and Black) "class favorities." TEA action led the district to abolish the dual favorities and to attempt to integrate the basketball team and majorettes.[6]

In Lockhart ISD, a TEA monitoring team found that procedures for election to the Key Club had led to exclusion of minorities from membership and thus violated this section of the order. Under pressure from TAD, the election procedures were changed and the district came into compliance.[7] In New Braunfels ISD, TEA found a Mexican-American student club to be in violation of the order, and it was disbanded.[8]

In several districts, there existed activities in which only Anglos participated. In Round Rock, which is 83 percent Anglo, the girls' drill team had no minority representation, due largely to the prohibitive cost of uniforms and equipment, estimated at $500 per year.[9] In Crockett ISD, the school golf team practiced at a local country club which does not allow Blacks on its grounds. Since no Blacks had tried out for the team, the issue had not been joined.[10]

In several other districts, minority participation was limited in some extracurricular activities. Although guidelines for participation adopted by the districts concerned are nondiscriminatory, these procedures do not necessarily encourage minority participation. In Plainview ISD, for example, the TAD monitoring team found no minorities among the twirlers, nor on the golf team, and very limited minority participation on the newspaper staff and Key Club.[11] In Snyder ISD, which is roughly 70 percent Anglo, a TEA monitoring visit found that "although no discriminatory provision for admittance to extra-curricular activities could be ascertained, there exist at least 13 extracurricular activities which were all White. Among these were some of the most prestigious activities...."[12]

Faculty and Staff. Problems with discrimination in faculty and staff hiring and dismissals appeared in several of the districts visited. In some cases, administrative law judges in HEW or courts had found discriminatory practices and awarded damages; in others, allegations were made that discrimination in personnel practices continued. In the visited districts, it was our general impression that the Office of Civil Rights of (formerly) HEW, individual plaintiffs, or intervenors had been more actively involved in addressing problems of faculty and staff discrimination than had TEA.

In Victoria ISD, a class action suit involving fifty-five individuals, claiming a pattern of discrimination in faculty and staff personnel practices, was filed in 1973 with the support of LULAC and NAACP. Judge Owen D. Cox

(Southern District of Texas) found in favor of the plaintiffs and awarded them monetary damages. The district appealed, but eventually lost the appeal in September 1979. Since Victoria ISD was also appealing an HEW administrative finding in 1973 that vestiges of a dual system still existed and warranted a subsequent cutoff of federal funds, TEA did not become involved. At the time of our visit, this appeal was still pending in the Office of the Secretary of HEW. The assistant to the superintendent observed that TEA had taken a "hands off" policy toward the district while the matter was under appeal.[13]

In Karnack ISD, an Anglo majority school board was elected in 1978, replacing one which had a Black majority for several years. Two former minority members of the board (who also claimed voting irregularities in the 1978 school board election) stated that soon after the new Anglo board took office, a number of Blacks in the school system were fired without cause. As a result, according to them, NAACP has recently filed suit on behalf of the plaintiffs in federal court. We were unable to determine whether this allegation had been brought to the attention of TEA. However, as observed above, TEA still considers the district to be in litigation as the result of an earlier suit filed by the board but later dropped.[14]

In Daingerfield, a Black staff member asserted that he had been passed over for promotion in favor of an Anglo woman with lesser credentials (whose husband was manager of Lone Star Steel Company and who played bridge with the superintendent of schools). He further alleged that there was discrimination in teacher hiring and that qualified Blacks were being passed over in favor of Anglos. His allegations were seconded by the former (Black) superintendent of Cason ISD (which was earlier consolidated with Daingerfield), who observed that there were fewer Blacks employed now than when the two districts were merged.[15] We were not able to determine whether these allegations had been brought to the attention of TEA.

In Taylor ISD, one school official commented, not for attribution, that he considered minorities less qualified teachers than Anglos and on occasion had hired minority teachers only to fill such "optional" courses as physical education and home economics. He stated that this was quite probably in violation of the court order but that he would maintain the practice until the TEA forced him to discontinue it.[16]

In Snyder ISD, HEW investigated the dismissal of Black professional staff and found the district in violation of Title VI of the Civil Rights Act of 1964. We were not able to determine the role of TEA in this matter.[17] In several other districts visited, among them Crockett and Karnack, current or former minority staff or teachers alleged that discrimination in hiring and separation of minority faculty and staff existed.[18]

A number of districts reported difficulties in attracting sufficient numbers of qualified minority teachers. This may partly be due to a greater statewide demand for than supply of minority candidates, but the problem is exacerbated in districts which are remote from concentrations of minorities. Especially in the smaller towns, it is hard to attract a minority teacher--who can command better pay, enjoy more acceptance, and have an active social life within a minority community in the larger urban areas. Among districts raising the recruitment of minority teachers as a pressing concern were Lockhart, New Braunfels, and Smithville, where a TEA plan adopted in the mid-1970s helped to facilitate hiring of minority teachers. On the other hand, Brownsville and San Felipe-Del Rio reported severe difficulties hiring Anglo teachers.[19]

Student Assignment. As noted in Table 7 above, thirteen of the districts visited contain, according to TEA data, one or more 66 percent minority campuses. Of the thirteen, six are under separate integration or consolidation orders (Galveston, Karnack, Northside, San Felipe-Del Rio, Victoria, and Wilmer-Hutchins) and are thus removed from TEA's enforcement jurisdiction. Of the remaining seven, three (Brownsville, Lockhart, and San Marcos) are either unitary districts or those with over two-thirds minority enrollment. The remaining four--Crockett, Marshall, Plainview, and Snyder--number among what we identify as critical districts. (See Tables 5 and 6 above.)

In those districts which have substantially desegregated, a common pattern may be found. Those districts offered freedom-of-choice plans in the early and mid 1960s, then closed down predominantly minority schools and moved toward integration in the late 1960s under pressure from the Office of Civil Rights of the Department of HEW. By the early 1970s, most districts--generally those with smaller enrollments--had desegregated. Those districts which resisted desegregation plans proposed by HEW (or occasionally, TEA) entered litigation and have joined the category of court-order districts. These patterns, however, vary from district to district, as the examples below indicate.

Plainview ISD is a district which came into compliance with the student assignment provision of the order due largely to the efforts of the Technical Assistance Division. Plainview ended its dual school system in 1969 with the closing of identifiably Black and Mexican-American schools. (The student population of the district is roughly 60 percent Anglo and 40 percent minority.) In 1974, HEW's Office of Civil Rights told the district to develop a plan to desegregate these elementary schools. The superintendent turned to TAD, which suggested several plans. One of these plans, involving substantial busing, was adopted by the school board in 1974--in spite of hostile opposition to the plan on the part of both the minority and majority communities. The plan involved busing of pupils to a central point and then additional feeder routes to various campuses. One Plainview elementary school has a minority population which fluctuates above and below 66 percent by a percent or two each year, due largely to housing patterns. The district was worked closely with the Technical Assistance Division in an attempt to bring this campus under 66 percent minority, and the working relationship between school officials and TEA is one of cooperation. The district is visited regularly during those years in which the elementary school has a minority enrollment of 66 percent.[20]

A different pattern may be found in San Marcos ISD, which eliminated its dual school system in the mid-1960s by converting to a unitary system, i.e., separate schools for K-1, 2-3, 4-5, 6, 7-8, and 9-12. Since the district is approximately 70 percent minority and 30 percent Anglo, the campuses themselves reflect a distribution of minority students over 66 percent. Due to the greater attrition rate of minorities, as opposed to Anglo, students, the lower grades tend to be more heavily minority than the upper grades. For example, the eighth grade class is approximately 70 percent minority, whereas the twelfth grade is roughly 50 percent minority. Kindergarten classes contain roughly 75 percent minority students.[21]

Northside ISD eliminated its dual school system by the late 1960s. By the mid-seventies, however, two of its elementary schools contained pupil enrollments substantially above 66 percent minority, though the district is predominantly Anglo. In 1975, TEA found Northside in violation of Section F and threatened to impose the sanctions specified by the order if the district did not come into compliance. The district in turn brought suit against TEA in the District Court for the Western District of Texas (Judge Adrian Spears), seeking a permanent injunction against the imposition of sanctions. The injunction was granted in 1976 and the district moved into court-order status. This injunction,

plus the refusal of the State Board of Education to allow the commissioner to appeal, had a definite chilling effect on the enforcement efforts of the Technical Assistance Division in the area of student assignment.[22]

This effect was intensified by a similar injunction granted by another district court in a suit brought by Gregory-Portland ISD. In 1975 TEA found Gregory-Portland ISD in violation of the student assignment section and moved to impose sanctions. The district sued TEA in the Southern District, seeking an injunction against enforcement of the sanctions, and was granted injunctive relief on January 30, 1976. As in the Northside case, the commissioner of education refused to appeal, but here the federal government entered and appealed the case to the Fifth Circuit. In July 1978, the Fifth Circuit ruled that the lower court had erred and directed that the injunction be dissolved and the action transferred to the Eastern District or dismissed (576 F.2d 83 [1978]). Gregory-Portland ISD then sought relief in that district. In August 1980, Judge Justice found in favor of TEA and ordered the implementation of the TEA desegregation plan--essentially the conversion of Gregory-Portland to a unitary district (498 F. Supp. 1356 [1980]). His decision was, however, struck down by the Fifth Circuit on August 20, 1981 (654 F. 2d 989 [1981]).

Victoria ISD eliminated its dual system in the early 1960s. In 1973, the Office of Civil Rights, due largely to pressure from NAACP and LULAC, brought suit against continuing segregation in several campuses. And administrative law judge in the Department of Health, Education, and Welfare found no segregatory intent on the part of the district. His decision was appealed by OCR to the Office of the Secretary of HEW. As far as can be determined, the matter still rests with the Secretary of Education. Since the issue is on administrative appeal, TEA currently treats Victoria as a court-order district.

Snyder ISD is representative of problems TEA has encountered with enforcement of this section due to the shifting basis of constitutional standards concerning segregation. Snyder adopted a freedom-of-choice plan in the mid-1960s and by 1968 had dismantled its dual school system. In 1975, the district closed a predominantly minority junior high school. One elementary school, however, has continued to enroll over 66 percent minority students (this in a district with an Anglo student population of roughly 74 percent).

On January 25, 1977, the director of the Technical Assistance Division wrote the superintendent of the district. informing him that the elementary school in question was in violation of the order; the district was given thirty days to comply, but did not. On March 28, 1977, the deputy commissioner for administrative services of TEA wrote the district informing them that the TEA plan to desegregate the elementary school must be implemented or the Agency would apply the sanctions specified in the order. Sanctions were not applied. On July 1, 1977, the Technical Assistance Division wrote then-Commissioner Brockette with the results of a review of the district undertaken on June 14 and 15, concluding that the racial composition of the elementary schools "does not exist due to segregatory intent of past or present board of trustees of the Snyder ISD."[23] In September 1979, the director of TAD wrote the superintendent that the 76 percent minority enrollment in the elementary school was not due to any fault or policies of the ISD and concluded, "It is the opinion of the TEA, therefore, based on its experience in the Northside ISD and the Gregory-Portland ISD cases, and the Supreme Court ruling in Pasadena v. Spangler that the Snyder ISD is currently satisfying constitutional standards."[24]

In 1971, OCR began administrative action against Marshall ISD to desegregate two 95 percent minority elementary schools and, unable to secure compliance, referred the matter to the Justice Department in 1975. In July 1978, responding to pressure from TAD, the Marshall ISD adopted a building program and related desegregation plan to eliminate the minority campuses to become effective in 1980-81. The plan was approved by TEA. In January 1980, the district asked that implementation of the plan be delayed until 1981-82. TAD refused to grant the extension, but was overruled by then-Commissioner Bowen.[25]

Complaints and Grievances. In at least three of the visited districts, complaints charging discrimination of various kinds had been lodged with TAD; each of these complaints had been investigated. (One recalls that under TEA procedures, investigation of complaints is the only way in which a visit to a district can be triggered outside of the coordinating monitoring review or visitations under the 66 percent minority campus rule.) In Crockett, a parent complained that the disproportionate failure rate among Black students was due to discrimination. TAD visited and found the complaint unsubstantiated.[26] In Taylor, the superintendent forwarded to TAD a complaint from a group of Black parents that their children were discriminated against in classroom discipline, in vocational counseling, in sports, and in several other areas. After a very thorough investigation,

which involved interviewing nearly fifty individuals, the TAD review team concluded that a pattern of overt discrimination was not evident, but warned:

> Although most of the allegations voiced by the dissident parents have shown themselves to be either unprovable, groundless or already dealt with in an acceptable manner, the district should be aware that the reasons which moved these concerned parents to complain are very real. There are racial attitudes and stereotyping which permeate the school system and the community and which are held by members of all races toward members of other races. This makes fair treatment of all students difficult to attain and difficult to perceive even when it is attained.[27]

In Karnack, TAD investigated allegations that a number of Anglo students were attending schools in neighboring districts, but was unable to substantiate the allegation. The then-minority-dominated school board later filed suit in this matter (see "Student Transfers" in this chapter).[28]

DISTRICT ATTITUDES TOWARD TEA ENFORCEMENT OF CA 5281

In addition to the experience of the districts visited with the various sections of the order, we were interested in their overall views and attitudes toward the Technical Assistance Division and its enforcement efforts. Our findings in this regard are somewhat impressionistic, but several patterns can be discerned.

First, district officials generally gave high marks to the abilities of the staff of the Technical Assistance Division. They were seen as informed, competent, and sensitive to the nuances and difficulties of their task. Several districts commented that they were surprised that TAD consultants were as effective as they were, given their small number and heavy visit schedule. Only occasionally were negative views toward the technical assistance consultants aired. Not surprisingly, these adverse reactions tended to surface in those districts (Northside, Marshall, and Karnack) where TAD had taken or attempted to take an assertive role in enforcing the order.

Second, the frequency of contact with TAD staff varied considerably. Those districts under the 66 percent minority

campus provisions of the order were, as required, visited once a year--even though many of these visits were, given the heavy minority ethnic makeup of the district, pro forma. Those districts not under the 66 percent minority campus visitation rule reported infrequent visits, save in cases where TAD had visited the district in response to complaints.

Third, the districts perceived TAD by and large as serving an assistance function rather than an enforcement mechanism--perhaps reflecting TAD's rather ambivalent position within the political and organizational environment of TEA itself. Of those districts visited regularly or fairly frequently by TAD, seven saw its primary role as giving assistance and advice; five perceived its role as a dual one involving both assistance and enforcement; and one viewed TAD primarily as an enforcement agency.

NOTES: CHAPTER 3

1. See, for example, Harell R. Rogers and Charles S. Bullock, Coercion to Compliance (Lexington, Mass.: D. C. Heath, 1976), pp. 33-36.

2. Wilmer-Hutchins field notes.

3. Letter from Superintendent James Collins to Gilbert Conoley, August 17, 1978, TEA files; Karnack field notes; conversation with James Brady, attorney for Karnack ISD, Austin, Texas, August 1, 1980.

4. Wilmer-Hutchins field notes; letter from Marlan Brockette to Mayor Donald Lucky, July 23, 1974, TEA files.

5. Karnack field notes.

6. Harleton field notes.

7. Lockhart field notes.

8. New Braunfels field notes.

9 Round Rock field notes.

10. Crockett field notes.

11. Coordinated Monitoring Visit Report, Plainview ISD, October 2-3, 1979, TEA files.

12. Coordinated Monitoring Visit Report, Snyder ISD, January 12, 1977, TEA files.

13. Victoria field notes.

14. Karnack field notes.

15. Daingerfield field notes.

16. Taylor field notes.

17. Snyder field notes.

18. Crockett and Karnack field notes.

19. Field notes of cited districts.

20. Plainview field notes; letter from consultant Harvey King to Superintendent Glenn Harrison, January 8, 1978, TEA files.

21. San Marcos field notes.

22. From 1975 onward, the original decisions in the Northside and Gregory-Portland cases led to reduced enforcement activity by TAD against possibly offending school districts outside the Eastern District. The recent development in the Gregory-Portland case may impede further efforts of TAD to secure compliance in student assignments. Moreover, the Division is scheduled for substantial staff reductions due to pressure from the Board.

23. Memorandum from Gilbert Conoley et al. to M. L. Brockette, July 1, 1977, TEA files.

24. Letter from Gilbert Conoley to Bill J. Hood, September 26, 1979, TEA files.

25. Marshall field notes; letter from Alton Bowen to Superintendent Truitt Ingram, February 13, 1980, TEA files.

26. Crockett field notes.

27. Interoffice communcation from three TAD consultants to Gilbert Conoley, April 19, 1978, TEA files.

28. Karnack field notes.

CHAPTER 4

ANALYSIS AND RECOMMENDATIONS

INTRODUCTION

In the annals of desegregation policy, U.S. v. Texas ranks among the most broad and comprehensive remedies ever ordered by a district court. The vast bulk of decisions previously handed down by the federal courts concerned individual school districts or local governments and were limited largely to student and staff assignments.[1] U.S. v. Texas, on the other hand, affected more than one thousand independent school districts and attempted to remedy a wide range of discriminatory practices; it is thus in a class by itself. The order is also novel in its reliance on an administrative agency, TEA, as the primary vehicle for its implementation.

The potential impact of the order was limited, however, through its modification by the Fifth Circuit Court of Appeals. This modification placed those districts containing the most blatant remnants of a dual school system largely beyond its reach. As noted, it is in these "court-order" districts that segregation in student assignment has proved most tenacious. As of 1971, fully two-thirds of the forty three court-order districts exhibited indices of dissimilarity of .40 and above for pupils in grade K-6, indicating substantial segregatory patterns. In that same year, moreover, the median index of dissimilarity for these districts was .59. Of those nonunitary districts subject to the order under U.S. v. Texas, on the other hand, only 12 percent exhibited dissimilarity indices of .40 in that year. Their median index of dissimilarity was .07.

A judgment as to the effectiveness of the implementation of the order, however, must be measured against progress toward compliance in those districts actually subject to its enforcement provisions. Overall, we conclude that the implementation of the remedies prescribed in U.S. v. Texas has been a qualified success--qualified by the fact that compliance has been more easily achieved with certain provisions of the order than with others. For example, segregation in transportation routes throughout the affected districts appears to have ended. The same can be said for

segregatory changes in the boundaries of school districts, for the transfer of school district real property, and, to a lesser extent, for discrimination in extracurricular activities.

The effectiveness of the order is less clear in faculty and staff discrimination, student transfers, complaints and grievances, and student assignment. Part of the impediment to effective enforcement in these areas has to do with the sanctions specified by the order and part with the procedures for implementation adopted by TEA.

ANALYSIS

Faculty and Staff Discrimination. In our visits to the sample districts, we discovered several cases in which discrimination had been proved or alleged (see Chapter 3). Especially striking in these districts was the fact that recourse by aggrieved parties was largely to the courts (or in some cases, the Office of Civil Rights) rather than to the Texas Education Agency. It should be recalled that opportunities to search for unreported patterns of faculty and staff discrimination was infrequent. They are conducted in conjuction with accreditation visits, which may come as much as seven or eight years apart. Further, lodging a discrimination complaint with TEA is something which many individuals appear reluctant to do, especially if they perceive the Agency as less than an impartial investigator. A formal complaint, moreover, may expose the grievant to possible retribution from the school district concerned.

It is possible that some district officials practice discrimination in open disregard of the order. Recall the comment of one school official that he knew his hiring and teacher assignment practices were in violation of the order but would continue until TEA forced him to stop. In general, there appears to be either considerable ignorance among faculty and staff of the role of TEA in investigating allegations of discrimination, or a reluctance to utilize this avenue of redress--and possibly a comination of the two. Obviously, discrimination in faculty and staff personnel matters is difficult to uncover if a complaint is not lodged with the agency by the individual concerned.

Complaints and Grievances. Our general impression is that some potential complaints concerning possible

discrimination go unreported for some of the same reasons suggested in the discussion of faculty and staff discrimination above. Parents, students, and others in the school system may either not be aware of the grievance mechanism provided by the order or be reluctant to "get involved." Obviously, the Texas Education Agency cannot respond to complaints of which it is ignorant. As far as we can determine, those complaints that are received by the Technical Assistance Division have been carefully investigated.

Student Transfers. As noted above, TEA has returned the responsibility for reviewing requests for transfers to the school districts concerned. Its Division of State Funding monitors the ethnic composition of all districts to determine whether any district has permitted transfers which alter its ethnic composition by 1 percent or more. Though this procedure has eliminated the onerous burden of central review of each request for transfer, it has given leeway to districts that is susceptible to abuse. Under current review methods, it may be difficult for the Division of State Funding to determine whether shifts in ethnic composition of districts is due to changes in the pupil population mix or to transfers of pupils across district boundaries.

Further, evidence suggests that the "hardship" transfers allowed by the modification of the original order may be abused by some districts. An associated problem is that of determining a pupil's residence for school attendance purposes. Apparently some pupils who claim residence and attend school in one district actually live in another.[2]

Some districts, as we have noted, appear to have accepted transfer students in violation of the order, either before or after the institution of the 1 percent rule. These districts continue to enroll these students as "ineligibles" and to forego the state average daily attendance funds concerned. We were not able to determine from our limited field sample how widespread this practice may be, but it warrants further investigation.[3]

Student Assignment. The student assignment provisions of the order have been among the most difficult to implement. (Indeed, much of the litigation stemming from the original order has concerned student assignment requirements.) Due partly to the lack of precise recordkeeping within TEA, it is difficult to judge how effective the implementation of this portion of the order has been. In the early years, a

number of offending districts came quietly into compliance with the student assignment provisions after visitations from the Technical Assistance Division; no reports on these districts were filed. The Division estimates that since the issue of the order, some thirty-five to forty districts which previously had one or more campuses of 66 percent or greater minority student concentration have readjusted their student assignments to bring the campuses in question below the 66 percent minority guideline. There are several districts with one or two campuses of near 66 percent minority enrollment which may in one year fall slightly below and the next year slightly above, thus returning the district to the 66 percent minority list.

Our data shed some additional light on this question. As explained in the previous chapter, 12 percent of all districts under the order showed an index of dissimilarity of .40 and above (indicating moderate to severe segregation) in 1970-71. By 1978-79, this proportion had dropped to 6 percent. Moreover, the median index of dissimilarity, which was .10 in 1970-71, had dropped to .07 by 1978-79. These data suggest a continuing abatement of discriminatory practices in those districts under the order.

It is difficult to determine, however, to what extent this trend is due to enforcement of the order by TEA and what extent to other factors. Of the districts we visited, only Plainview was a clear example of TEA action which led to compliance with the student assignment provisions of the order. In Marshall, pressure from the Technical Assistance Division has forced the district to move toward further desegregation, although the timetable for implementation has on several occasions been delayed by the Commissioner of Education.[4]

Due in part to the procedures specified in the original order, TEA has encountered serious difficulties in implementing the student assignment provisions. The adoption of a 66 percent minority campus rule as a trigger for investigation of possible discriminatory patterns has led to much wasted effort on the part of the Technical Assistance Division as well as to litigation which has had a chilling effect on its enforcement efforts. As noted in the previous chapter, there are nearly 200 districts in the state which have one or more campuses with 66 percent or greater minority concentration. Nearly half of these districts are unitary and thus fully reflective of the pupil distribution. Another 25 percent

of these districts, mainly in the south of Texas, contain minority pupil populations of 66 percent or greater.[5] And still another 10 percent are under separate court order and not subject to the enforcement mechanisms of CA 5281. Under the provisions of the order, all these districts must be visited yearly. This produces a substantial waste of resources of the Technical Assistance Division, whose consultants must make pro forma visits to these districts at the expense of more detailed investigation of possible remaining discriminatory patterns in others.

Of the remaining 66 percent minority campus districts in the state, there are a number in which remnants of a dual school system appear to remain but against whom no action has been taken. Some one dozen districts are non-unitary, have fewer than two-thirds minority pupils, and yet show an index of dissimilarity in grades K-6 of .2 or greater.[6]

The utility of the 66 percent minority distribution as a triggering mechanism is questionable for reasons other than the manpower wasted in mandatory visits. According to our findings, there are some twenty districts in the state which have no single campus with a minority student enrollment of 66 percent or greater but which evidence indices of dissimilarity of .20 or higher, suggesting the possibility of continued discrimination. Examples include the district of Alama Heights, in the city of San Antonio, which has nearly 75 percent Anglo student enrollment and an index of dissimilarity of .49; Brazosport, with an Anglo enrollment of 73 percent and a dissimilarity index of .36; and Corsicana, with an Anglo enrollment of 65 percent and a dissimilarity index of .31.[7] The adoption of the 66 percent minority rule has effectively foreclosed TEA scrutiny of segregatory patterns in such districts. While dissimilarity indices do not themselves necessarily imply discriminatory intent, they can be used as screening mechanisms for evaluating the student assignment policies and practices of various districts.

TEA Enforcement Procedures. It appears from this review that the political and higher administrative echelons of TEA, almost uniformly opposed to the intent of CA 5281, have taken only the minimally necessary steps in enforcing its provisions. The leadership cadre of TEA has, for the most part, sought to reduce the visibility of the Technical Assistance Division within the Agency as well as to limit its activity in the field. (In the annual reports issued by TEA and in its dealings with the legislature and other elements of its political environment, the Technical Assistance Division is

given an extremely low profile.) As noted above, early policy decisions prohibited unannounced or random checks on possibly offending districts and provided that visits of the Technical Assistance Division staff to districts other than those with a 66 percent minority campus be either in conjunction with the scheduled accreditation review of that district or in direct response to a complaint.

These restrictions on enforcement of the order and other examples of reticence of the TEA leadership not only reflect the political culture of the Agency but also call into question the utility of giving it the burden of enforcement. TEA is an administrative agency which has been concerned largely with funding local districts, delivery of services, and a wide variety of support activities. Enforcement responsibility, especially when mandated by a court seem as "foreign" and intrusive, goes against its historical grain. In the broader environment of TEA, the Technical Assistance Division is an outcast.

The Problem of Sanctions. The sanctions contained in the order have, for the most part, proved ineffective. The major "effective" sanction, as we have seen, has been the threat of withdrawal of funding for school transportation. The sanctions specified in other sections of the order have proved inappropriate and unusable--either too weak (as in the case of student transfers) or too strong (as in student assignment). At one end of the spectrum, the withdrawal of average daily attendance funds for districts found in violation of the student transfer provisions has not proved to be sufficiently strong disincentive, for some districts are willing to forego those funds and to carry students on their rolls as ineligibles. At the other end of the spectrum, the most severe penalties provided--termination of Minimum Foundation Program funds and the lifting of accreditation--have never been successfully applied.

The reluctance of TEA to threaten offending districts with such severe sanctions is understandable. Many smaller districts would simply be unable to survive without state subsidy and the imprimatur of accreditation. The imposition of such punitive sanctions would result in the firing of teachers, the closing of schools, and the shutting down of most educational functions--all of which would stir public indignation against the order and the court, politicize further an already difficult situation, and raise substantially the level of conflict. Furthermore, from the prespective of equity, these sanctions would penalize the innocent victims

of possible discrimination--the pupils--rather than those responsible for it--local boards of education and their appointed officials. It comes as little surprise that such draconian meansures have been attempted only when all other means of compliance enforcement have failed. The field test for the imposition of such sanctions have been muddied by the fact that the only districts in which withdrawal of accredita- and Minimum Foundation Funds was attempted then sought and successfully attained injunctions against TEA enforcement.[8]

TEA Procedures for Enforcement of the Student Assignment Provision. A related and important consideration stems from a recent ruling by the Fifth Circuit Court of Appeals in the Gregory-Portland case reversing an order by the trial court that a desegregation plan proposed by TEA be implemented.[9] In addition to the legal errors it found, the court of appeals was critical of the student assignment provisions of the order under CA 5281 and of the procedure which TEA followed in making a determination that the ethnic imbalances of the district campuses were due to discrimination. The appellate decision challenged the definition of ethnically disproportionate campuses as those containing 66 percent or greater minority students. Noting that a number of districts in the south of Texas have large Hispanic populations, the court observed: "To infer discriminatory intent from such slender factual data and act decisively upon that inference is to run a high risk of acting unjustly. . . . The mere numbers . . . while doubtless sufficient to prompt further inquiry, are an insufficient foundation, especially in view of Texas demography, for the drastic action that the court ordered and approved on their basis alone."[10]

The Fifth Circuit opinion was even more critical of the procedures which TEA, under the instructions of the trial court, had followed in its attempt to withdraw funds and accreditation should its student assignment plan not be implemented by the district. TEA, as the court's agent, moved to "impose final requirements upon any such district that the court itself could have imposed only after a hearing on the merits, requirements backed by sanctions competent to destoy the district and its functions root and branch."[11] After finding a potential case of discrimination under the 66 percent minority trigger, TEA's investigation

> should, to comport with elementary due process, incorporate at least the safeguards of notice and the offer of a hearing before such mortal sanctions are applied . . . Interests of federalism . . . dictate that contests

> between the United States and such entities be as rationally conducted as any others; and in the exercise of our supervisory powers we direct the district court to discontinue the use of the procedures discussed above.[12] . . .

In sum, the appellate ruling challenges seriously both the 66 percent minority trigger mechanism and the method by which TEA, under the order, conducts the required investigation into possible discrimination.

RECOMMENDATIONS

The thrust of our findings suggests a need for major modifications in the order as well as in the procedures for its enforcement. We recommend changes in the organizational locus for the order's enforcement, in the procedures surrounding its implementation, and in the sanctions prescribed. These recommendation are detailed below.

Organizational Location of Enforcement of the Order. Many, though by no means all, of the difficulties encountered in fully implementing U.S. v. Texas may be traced to the decision to place enforcement of the order within the Texas Education Agency. Given the novelty and burden of enforcing the order in its early years, the court may well have been justified in placing its implementation initially in an administrative structure, TEA, which had substantial knowledge of local districts and regular communication with them. The usefulness of perpetuating this arrangement, however, is open to serious question. After the flurry of implementation during the first several years after the order was promulgated, the Technical Assistance Division and other elements of TEA have adopted a routine if not passive role in implementing the order. As we have seen, the prevailing political philosophy of the leadership of TEA has seriously impeded the efforts of the Technical Assistance Division, which remains a pariah.

The time has come to shift at least some of the enforcement burden of the order from TEA to an office of the court itself--most likely a Special Master. The more intractable problems of enforcement--especially regarding the student assignment provision of the order--could more effectively be addressed through the appointment of a Master responsible to the court.

The most promising approach would be to leave within TEA the more routine and "successful" implementation functions, such as school transportation, transfer of real property, and extracurricular activities. Their administration within TEA would be subject to the supervision of the Master. The remaining, more difficult portions of the order--student assignment, faculty and staff discrimination, grievances, and possibly student transfers--would be placed directly in the Office of the Master. The Technical Assistance Division could be recast as a unit primarily responsible for data gathering and data analysis and could conduct such special studies as the Master might assign. This approach, in short, would leave within TEA the more successful elements of implementation, preserve the Agency's lines of communications with the school districts, and shift the more difficult areas of enforcement to the Master's Office.

This arrangement would reduce the use of such avoidance mechanisms as making an end run around the Technical Assistance Division to the higher levels of TEA by those districts seeking to escape enforcement. Further, it would return disputes over noncompliance to the legal arena, where such disputes more appropriately belong. Lastly, this modification would have the added advantage, when coupled with an alteration of enforcement procedures discussed below, of meeting several objections to current procedures raised by the Fifth Circuit in its recent decision in the Gregory-Portland case.

Enforcement Procedures. It is evident from hindsight that several procedures specified by the court have proved impractical, flawed, or both. Most notable of these is the 66 percent minority campus trigger mechanism which mandates visits to districts in the search for possible continuing discrimination. This provision has led to a substantial waste of the limited resources of the Technical Assistance Division and, by its arbitrary nature, left the order open to challenge. As an indicator of possible discrimination, the 66 percent minority campus provision is simply irrelevant in those districts with high minority pupil concentrations--especially in the central and southern portions of the state where, as we have seen, hundreds have minority pupil populations of greater than two-thirds.

We recommend that this provision be abolished. In its place should be substituted a measure which compares concentration of minority students in various campuses to the overall ethnic makeup of the district in question. Such a statistic as the index of dissimilarity described in Chapter 3 (or the

20 percent variation rule suggested in Adams v. Weinberger) is more appropriate. This index would focus enforcement efforts on those districts in which one or more campuses are substantially out of line with the overall mix of minority and majority students and provide a more reliable initial measure of the possibility that remnants of a dual school system still exist.

After a preliminary investigation based on this index, districts which are found to be in possible violation of the order could then be brought into a hearing in which evidence could be reviewed, facts determined, and basic guarantees of due process maintained. (This change would also be consistent with the "due process" mandate of the appeals court opinion in the Gregory-Portland case.) Also indicated are changes in procedures for handling staff and faculty allegations of discrimination in hiring, transfer, and separation--which bulk large among the communications received by the Technical Assistance Division. It is suggestive that, in our field work, we were unable to discover more than a handful of cases in which TAD was able effectively to address instances of faculty and staff discrimination. The most frequent recourse appears to be litigation on the part of the individual plaintiffs concerned rather than TEA intervention. Moreover, among faculty and staff of the school districts visited, there seems to be little recognition of appeal to TEA as a vehicle for resolution of discrimination complaints. (It should be noted, however, that so far as we could determine, allegations of discrmination have been dutifully investigated by the Technical Assistance Division.)

It is likely that districts and their employees need once again to be informed of the avenue of grievance resolution through the order, and a mechanism to so inform these districts and their employees should be developed. The placement of investigatory and complaint resolution functions in the Office of the Special Master would quite possibly make the grievance process more visible to potential users. The various elements of TEA, mainly the Technical Assistance Division, could be instructed to forward complaints to this Office for review and possible investigation.

Another change concerns the review of student transfers, which has been returned to the individual districts under supervision of the Division of State Funding of TEA. As discussed previously, it may be difficult to ascertain from current data on ethnic distribution of students in a district the relative contributions to its ethnic composition of the

migration patterns of pupils on the one hand and the transfer of pupils on the other. The review of pertinent transfer data, including a new reporting requirement concerning the number and ethnicity of transfer students accepted by each district and their percentage of the pupil population, could be assigned to the Master. Further, a clear definition of residency for school attendance purpose should be developed by the court.

Sanctions. With a few exceptions, the basic sanctions employed by the order--the withdrawal of accreditation and various types of state funding to offending districts--have been a failure. The ultimate sanctions, suspensions of Minimum Foundation Program funding and accreditation, are such draconian measures that they have never been applied. For the most part, withdrawal of funds is simply not a realistic solution to most problems of noncompliance.

As noted above, the one area in which financial sanctions appear useful has been school transportation--targeted funds with a specific purpose which districts have chosen not to forego. In other sections of the order, a more effective approach might be to require an incremental, stepwise reduction of state Minimum Foundation aid, perhaps on the order of 10 percent for each semester an offending district remains out of compliance. However, it would be preferable, especially if the Special Master's Office is created, to deal with each offending district and its officials through imposition of one of a range of civil contempt sanctions which are available to the court.

In sum, what we suggest is a placement of most of the implementation functions now assigned TEA in an Office of the Special Master appointed by the court, supervision by the Master of those remaining, reduction of the role of the Technical Assistance Division to one of data gathering and ancillary staff service to that Office, and a primary reliance on civil contempt sanctions. With the changes in organization and procedure suggested above, CA 5281 could be more effectively implemented and could more adequately address the dismantlement of what remains of the dual school system in the state of Texas.

NOTES: CHAPTER 4

1. An exception is U.S. v. Georgia (CA 12972 N. D. Georgia, December 16, 1969), which affected some eighty-one districts in the state.

2. TEA action in this regard is hindered by an archaic ruling by the Texas Attorney General's Office as to what constitutes a residence for purposes of school attendance. Letter from Gilbert Conoley, former Director of TAD, May 28, 1982.

3. In this case, the experience of Karnack ISD may be instructive (see Chapter 3, "Student Transfers.")

4. See Chatper 3, "Student Assignment."

5. See Chapter 3, Table 4.

6. See Chapter 3, Table 5.

7. Other examples are found in Chapter 3, Table 6.

8. These are the Northside and Gregory-Portland cases, discussed in Chapter 3.

9. 654 F.2d 989 (1981).

10. Ibid. at 998.

11. Ibid. at 997.

12. Ibid. at 998.